UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

v. **Case No: 6:18-cr-273-Orl-41GJK**

BRYAN MATTHEW COONEY
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ORDER

THIS CAUSE is before the Court on Defendant's Motions to Suppress (Doc. Nos. 30, 31). For the reasons set forth herein, the motions will be denied.

I. FINDINGS OF FACT

Between September 19, 2018, and September 27, 2018, an undercover agent with the Federal Bureau of Investigation ("FBI"), Dustin Grant, participated in instant message conversations via an application called KIK Messenger ("KIK") with a user identified as "yolo17_cool." KIK uses smart phones to receive and transmit messages, photographs, and videos via the internet. KIK is also known by law enforcement to be an application used by collectors and distributors of child pornography to exchange such content.

During these chat conversations, yolo17_cool stated, among other things, that he was "active" with his twelve-year-old daughter and that he had performed "oral" with her. Agent Grant understood yolo17_cool's statements to mean that he was sexually active with his daughter and that they had engaged in oral sex. During this conversation, yolo17_cool sent Agent Grant a clothed picture of a girl who appeared to be approximately twelve years old, who yolo17_cool claimed was his daughter. Yolo17_cool also claimed to have pornographic videos and images of her. Later, in a group chat via KIK, yolo17_cool asked if any of the other users had a particular

video. In doing so, he described a particularly horrific child pornography video that is known to law enforcement as Daisy's Destruction.

Based on these chats, the FBI issued a subpoena to KIK, requesting subscriber information for yolo17_cool's account. The resulting information revealed that the IP address used by yolo17_cool was assigned to 3529 Merivale Drive, Casselberry, Florida. Defendant was identified via the Florida Driver and Vehicle Identification Database as being one of the persons who resided at the address. The FBI agents then examined Defendant's social media accounts, which revealed that one of Defendant's Facebook friends had a daughter who appeared to be the twelve-year-old girl depicted in the picture yolo17_cool shared on KIK—the girl who Defendant claimed was his daughter with whom he had been sexually active. Finally, FBI agents observed a motor vehicle at the Merivale Drive address that was registered to Defendant. Based on this evidence along with the agents' knowledge and experience in child exploitation and child pornography investigations, a warrant was issued to search the Merivale Drive property.

On November 13, 2018, FBI agents Steve McElyea and Rodney Hyre visited Defendant's residence. At approximately 6:45 a.m., the agents knocked on the door, which was answered by a female, who was later identified as Defendant's mother. The agents told Defendant's mother that they were investigating a vehicle accident that they believed Defendant's car had been involved in. While the agents remained outside, Defendant's mother woke him up. Defendant then came outside and spoke to the agents. Defendant had his phone in his hand when he exited the residence. The agents, who were in plain clothes and who were not brandishing their weapons, introduced themselves and identified themselves as FBI agents. They immediately informed Defendant that he was not under arrest "or anything like that" and explained that they just wanted to ask him some questions. After a few brief questions, Plaintiff utilized his phone to send his girlfriend a text

message. The agents then suggested that they move a little farther away from the residence, toward the sidewalk, so that Defendant's mother did not overhear the discussion.

After they had achieved relative privacy, the agents informed Defendant that they had tracked a KIK account to his cell phone and questioned him about the yolo17_cool account. At first, Defendant denied that he had a KIK account or any knowledge of the referenced chats. At one point, Agent Hyre asked for Defendant's phone and his password to see if a KIK account was on it. Although Defendant voluntarily relinquished his phone, Defendant did not want to give Agent Hyre his password. So, Agent Hyre explained that they had a search warrant. At that point, Defendant asked if the agents wanted to go inside and attempted to go in first to contain his dogs. The conversation remained calm and non-threatening, but the agents told Defendant that he could not go inside by himself in case he had any weapons. Defendant also asked if he could have his phone back temporarily to call his girlfriend to let her know what was going on. Agent McElyea responded: "I'm gonna hold the phone right now. We have a search warrant, okay, so I hope you understand, okay." Agent McElyea then proceeded to explain that a forensic examiner would be analyzing Defendant's phone. At this point, Defendant confessed that he did have a KIK account.

Agent Hyre again explained, "I don't want you to feel coerced, I don't want you to feel pressured. I want to have an honest conversation with you . . . ." Agent McElyea then reiterated that Defendant was not under arrest and stated, "[W]e are trying to be as low key as we can." Defendant expressed his understanding and they continued the conversation. Eventually, Defendant acknowledged that the yolo17_cool KIK account was his. The agents and Defendant then walked into the house together, where the conversation continued.

Once inside the house, Defendant admitted to watching child pornography, to getting it through KIK, and to saving it in his Dropbox account. After Defendant made, essentially, a full

confession, the agents asked if they could take over Defendant's KIK account to try and find people who may be producing child pornography. Defendant gave his permission. During this conversation, Defendant asked: "Am I incriminating myself on a lot of this? Is this going all against me . . . ?" At that point, Agent Hyre mirandized Defendant. Unfazed, Defendant continued with the conversation in the same manner as he had been prior to being read his rights.

II. CONCLUSIONS OF LAW

Defendant seeks suppression of his incriminating statements and of any evidence contained on his phone due to alleged violations of his Constitutional rights. Specifically, Defendant argues that the warrant was not supported by probable cause, that the agents intentionally omitted information from the warrant that would have established that probable cause was lacking, that the warrant was overbroad, and that the search was beyond the scope of the warrant. Defendant also asserts that his statements should be suppressed because they were a product of coercion and improper inducement and because he was not properly given his *Miranda* warnings.

A. WARRANT

1. Probable Cause

To obtain a search warrant, law enforcement must "convince the authorizing magistrate that probable cause exists for the search." *United States v. Pendleton*, 447 F. App'x 978, 981 (11th Cir. 2011). "Probable cause to support a search warrant exists when the totality of the circumstances allow a conclusion that there is a fair probability of finding contraband or evidence at a particular location." *United States v. Brundidge*, 170 F.3d 1350, 1352 (11th Cir. 1999). "[P]robable cause is a fluid concept—turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules." *Illinois v.*

Gates, 462 U.S. 213, 232 (1983). "[A] magistrate's determination of probable cause should be paid great deference by reviewing courts." *Id.* at 236 (quotation omitted).

Further, "[a]ffidavits supporting warrants are presumptively valid." *United States v. Lebowitz*, 676 F.3d 1000, 1010 (11th Cir. 2012); *see also Franks v. Delaware*, 438 U.S. 154, 171 (1978). "A defendant may challenge the validity of the government's affidavit by making a substantial preliminary showing that a false statement was included in the warrant affidavit knowingly and intentionally or with reckless disregard for the truth." *United States v. Gamory*, 635 F.3d 480, 490 (11th Cir. 2011). "In order to be entitled to relief a defendant must show not only that misrepresentations or omissions were intentionally or recklessly made, but also that, absent those misrepresentations or omissions, probable cause would have been lacking." *United States v. Novaton*, 271 F.3d 968, 987 (11th Cir. 2001).

The affidavit established the existence of probable cause. Defendant's primary argument in this regard is that the affidavit merely discussed conversations about child pornography and child exploitation, but there was no evidence that those things were actually occurring. Defendant's argument misses the mark. "Probable cause does not require certainty; rather, it is a doctrine of reasonable probability." *United States v. Castellanos*, 428 F. App'x 949, 958 (11th Cir. 2011) (quotation omitted).

Here, an individual was bragging about molesting a twelve-year-old and possessing pornographic images of her, and he was looking for child pornography via a platform known to be used by individuals involved in trading child pornography and exploiting children. The IP address associated with the username was traced to the Merivale Drive address, where Defendant was identified as a resident by his vehicle tag. Agents were then able to connect Defendant to the photograph of the girl shared via KIK by examining his Facebook account. Based on this

information, there was absolutely probable cause to believe that evidence of child exploitation and child pornography would be present at the Merivale Drive address and on electronic devices Defendant had access to.

All of Defendant's remaining arguments address the purported omissions made by Agent Hyre. Specifically, Defendant asserts that the Agent Hyre should have advised the Magistrate Judge of the failure to conduct additional investigation into the IP address. In Defendant's opinion, the agents should have utilized an available program to determine if any files attributable to the IP address had hash values previously identified as containing child pornography; that the agents should have investigated whether anyone associated with the IP address was a member of or subscriber to websites known to engage in the trading or storage of child pornography; that they should have determined whether the user of the IP address was using peer-to-peer software; and that they should have determined whether Defendant was the only person who had access to the IP address. Since they did not do these investigations, Defendant argues that they were required to notify the Magistrate Judge of their failures and that omitting such information renders the warrant invalid. The Court disagrees.

The fact that these additional investigations were or were not conducted is of no import in this case. As explained by the agents at the hearing, none of the investigative techniques identified by Defendant have any bearing on using KIK to share child pornography. Defendant's argument also ignores the fact that his conversations with the undercover agent via KIK also implicated child molestation and exploitation. Any evidence that may have been discovered from these additional investigations—i.e., whether Defendant was downloading child pornography or using peer-to-peer software—would have no relevance as to whether he had sexual relations with or pornographic videos of a minor. Finally, it was unnecessary for the agents to investigate whether Defendant was

the only one with access to the IP address. He had already been sufficiently tied to the yolo17_cool account by having access to the IP address and having a direct connection to the girl who yolo17_cool was claiming as his daughter.

The evidence that the agents possessed when seeking the warrant, which was included in the affidavit, was sufficient on its own to establish probable cause. Thus, its inclusion would have had no impact on the probable cause analysis.[1] The evidence will not be suppressed on this basis.

2. Overbroad

Next, Defendant argues that the warrant was overbroad. All warrants must "particularly describ[e] the place to be searched[] and the persons or things to be seized." U.S. Const. amend. IV. "The 'specific evil' that limitation targets 'is not that of intrusion per se, but of a general, exploratory rummaging in a person's belongings.'" *United States v. Blake*, 868 F.3d 960, 973 (11th Cir. 2017) (quoting *Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971)). "The description is considered sufficiently particular when it enables the searcher to reasonably ascertain and identify the things authorized to be seized." *United States v. Bradley*, 644 F.3d 1213, 1259 (11th Cir. 2011) (quotation omitted). "This requirement does not necessitate technical perfection; instead, it is applied with a practical margin of flexibility." *Id.* "[E]laborate specificity is unnecessary." *United States v. Betancourt*, 734 F.2d 750, 754 (11th Cir. 1984).

"[T]he scope of a lawful search is defined by the object of the search and the places in which there is probable cause to believe that it may be found." *Maryland v. Garrison*, 480 U.S. 79, 84 (1987). Contrary to Defendant's argument, the mere fact that the agents may have been authorized to search electronic devices owned by other occupants of the residence does not

[1] Further, there is no evidence that these purported omissions were intentionally or recklessly made.

automatically render the warrant invalid. The warrant specifically ties the authorized search to places and things that were reasonably likely to contain evidence of criminal activity—namely possession, production, and distribution of child pornography as well as child exploitation. *United States v. Gabel*, No. 10-60168, 2010 U.S. Dist. LEXIS 107131, at *28 (S.D. Fla. Sep. 16, 2010), *adopted*, *United States v. Gabel*, No. 10-60168-CR, 2010 U.S. Dist. LEXIS 107129, at *1 (S.D. Fla. Oct. 4, 2010). Additionally, Courts have recognized "the unique challenges posed by computer searches," and thus allow somewhat more leeway. *United States v. Brooks*, No. 3:13-cr-58-J-99MMH-JRK, 2013 U.S. Dist. LEXIS 184252, at *30–36 & n.18 (M.D. Fla. Oct. 18, 2013) (collecting and discussing cases). The warrant was not overbroad.

3. Outside the Scope

Finally, Defendant argues that the search and seizure of his cell phone was outside the scope of the warrant because it was taken from Defendant's person when they were outside of the residence. Defendant's argument takes a hyper-technical approach while ignoring common sense and practicality. The warrant authorized the agents to seize and search cell phones on the property if there was probable cause to believe the phones contained evidence of the specified illegal activity. Defendant's cell phone falls squarely into this category. Defendant was seen in possession of the phone—an iPhone—upon coming out of the house and while talking to law enforcement, and he stated that he owned an iPhone. He then was observed using the iPhone to send a text message to his girlfriend. Undoubtedly, the phone fell within the scope of the items described in the warrant.

Moreover, the warrant authorizes the search of the "property," which was described by certain identifying markers, including the address, a description of the exterior of the home, the location of the driveway, and a description of the mailbox. Nothing in the warrant explicitly

constrains the search to the interior of Defendant's home. At the time it was seized, Defendant was on the property. Accordingly, the search and seizure of Defendant's cell phone was within the scope of the warrant.

B. STATEMENTS

In addition to his arguments based on the search warrant, Defendant argues that his statements should be suppressed because they were involuntary and because he was not properly apprised of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966).

1. Involuntary

Defendant's argument that his statements were involuntary is not well-developed. It appears to be based on the fact that the agents told Defendant that it was "real important for him to be honest" with the agents and the fact that they confronted him with the evidence they had received from the undercover agent. There is nothing improper or coercive about the agent's actions. Indeed, they reiterated to Defendant that they did not want to coerce him into saying anything. Additionally, at the hearing, Defendant alluded to the agents making improper promises to coerce statements from him. No such promises are in the record. There is no evidence that Defendant's statements were coerced or otherwise involuntary.

2. Miranda

Defendant's arguments under *Miranda* also fail. "[T]he prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." *Miranda*, 384 U.S. at 444. "[T]he right to *Miranda* warnings attaches when custodial interrogation begins." *United States v. Brown*, 441 F.3d 1330, 1347 (11th Cir. 2006). "[W]hether a suspect is 'in custody' for purposes of receiving of *Miranda* protection, the

ultimate inquiry is simply whether there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest." *California v. Beheler*, 463 U.S. 1121, 1125 (1983) (quotation omitted). This determination "depends on whether under the totality of the circumstances, a reasonable man in his position would feel a restraint on his freedom of movement to such extent that he would not feel free to leave." *Brown*, 441 F.3d at 1347. "The test is objective: the actual, subjective beliefs of the defendant and the interviewing officer on whether the defendant was free to leave are irrelevant." *Id.*

Courts "consider several factors in determining custody, including whether the officers brandished weapons, touched the suspect, or used language or a tone that indicated that compliance with the officers could be compelled." *United States v. Stinson*, 659 F. App'x 534, 536 (11th Cir. 2016). Here, the agents were in plain clothes and did not brandish their weapons. The entire exchange was calm and cordial, and the agents informed Defendant multiple times that he was not under arrest and that they did not want him to feel coerced or pressured to talk to them. Defendant was not physically restrained. This interrogation also occurred in Defendant's yard and home. *Brown*, 441 F.3d at 1348 (stating that "courts are *much less likely* to find the circumstances custodial when the interrogation occurs in familiar or at least neutral surroundings, such as the suspect's home" (quotation omitted)(collecting cases)).

Defendant argues that the circumstances of his interview rise to the level of custody because the agents were in the process of executing a search warrant, they seized his phone, and they would not let him go anywhere unaccompanied. Such circumstances, however, do not rise to the level of custody for *Miranda* purposes. *See Stinson*, 659 F. App'x at 536–37 (determining that the defendant was not in custody where the interview took place in the defendant's home, defendant's movements were somewhat restricted during the search of his home but he was not

physically restrained, and the officers' weapons remained holstered); *United States v. Burk*, 737 F. App'x 963, 970–71 (11th Cir. 2018) (determining that the defendant was not in custody where the officers arrived at the defendant's house at 7:00 a.m., showed him a search warrant, asked him to take a seat in his living room, and asked him questions but did not draw their weapons, handcuff the defendant, or use abusive or threatening weapons). Notably, while "a reasonable person in [Defendant's] position may feel constrained not to leave" due to the ongoing search of his home, "he will not . . . be considered in 'custody' for Fifth Amendment purposes" unless "his freedom of action . . . [is] curtailed to a *degree associated with formal arrest*." *United States v. Colon*, 579 F. App'x 791, 793 (11th Cir. 2014) (quoting *United States v. Luna–Encinas*, 603 F.3d 876, 881 (11th Cir. 2010)). For the reasons discussed above, Defendant's freedom of action was not restrained to such a degree and, therefore, he was not in custody for *Miranda* purposes.

III. CONCLUSION

For the reasons set forth above, it is **ORDERED** and **ADJUDGED** that Defendants' Motions to Suppress (Doc. Nos. 30, 31) are **DENIED**.

DONE and **ORDERED** in Orlando, Florida on March 13, 2019.

CARLOS E. MENDOZA
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record